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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/873,698	06/04/2001	Slawomir T. Fryska	H0001347	4771

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EXAMINER

BUTLER, DOUGLAS C

ART UNIT	PAPER NUMBER
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3683

DATE MAILED: 07/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/873,698

Applicant(s)

FRYSKA ET AL.

Examiner

Douglas C. Butler

Art Unit

3683

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Paper No. 16.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 18-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 18-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

PART III

1. A copy of the translation of FR2693246 to Berndt et al is attached. According to current U.S.P.T.O. practice, this action is not made final since the translation was not previously furnished to applicants.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by FR2693246 to Berndt et al of record.

Figs. 1-3A of FR2693246 to Berndt et al. disclose an annular structural core 1 having sinusoidally-shaped or corrugated surfaces at Z (Fig.3) with frictional lining elements 5. The coatings 5 of Figs. 3A, 3 of Berndt et al are wear surfaces and are frictional lining disks as broadly recited. The instant specification includes no definition for “disk” which would preclude readability of the claim language on Berndt et al. Re claim 18, the coatings 5 constitute the “first” and “second” frictional lining disks of lines 4 and 8.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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7/25/23

Art Unit: 3683

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2, 5, 7-8 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over FR2693246 to Berndt et al. in view of Pigford (4982818), both of record.

FR2693246 to Berndt et al lack the specific material recited in the instant claims.

Pigford (4982818) discloses the feature of carbon-carbon core and/or friction linings.

It would have been obvious to select carbon-carbon material for the core and friction linings of FR2693246 as taught by Pigford since the use of carbon-carbon is a well known material for the intended use for enhanced braking capability. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

6. Claims 3-4 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berndt et al in view of Marin (3759353), both of record.

Instant claim 3-4 and 20 are directed to the use of the friction disk in fields of technology which use drive lugs (keys) for mounting the brake disk, rotor, disc, plate.

It would have been obvious to modify the friction disk of Berndt et al to include lugs either at the inner or outer surface as taught by Marin for mounting purposes to adapt Berndt et al to applications such as multi-disk brakes.

Art Unit: 3683

7. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over FR2693246 to Berndt et al in view of Cook et al (3800392) or Hummel (4991697), all of record.

FR2693246 to Berndt et al. lacks the claimed mechanical connection or fastener which is disclosed by each of the references to Cook et al. (3800392) and Hummel (4991697).

It would have been obvious to mechanically connect the linings 5 of Figs. 1-3A of Berndt et al. to its core by the use of mechanical fasteners as taught by each of the secondary references to Cook et al. and Hummel in order to secure the lining securely.

8. Claim 9 is rejected under U.S.C 103(a) as being unpatentable over FR 2693246 to Berndt et al. in view of Hill et al. (4011055), of record as Berndt et al. is modified by Pigford in paragraph 5 above. Hill et al. (4011055) teaches coating a brake with anti-oxidant coating (thermal coating) in order to reduce oxidation during high temperatures.

It would have been obvious at the time the invention was made to one having ordinary skill in the art to which the invention pertains to modify the principal reference to Berndt et al. (FR 2693246), as modified, to include a thermal coating as taught by Hill et al (4011055) in order to reduce oxidation during high temperature.


9. Applicant's arguments have been reviewed but are not convincing for the above reasons. Applicants argue that the coatings 7 of Berndt et al are not friction lining elements. The coatings 7 of Berndt of al are friction lining elements or disks as broadly recited.

Art Unit: 3683

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exmr. Butler whose telephone number is (703) 308-2575. The examiner is normally in the USPTO Monday-Friday from 5:30 a.m. to 2:00 p.m. Although the examiner may not always be present in his office to immediately answer the phone when called, the examiner will make every effort to return the call as soon as possible. If the examiner does not answer his phone, the examiner suggests that a brief message be recorded on the examiner's voice mail machine when necessary and appropriate. The examiner normally checks recorded phone calls at least once a day unless on leave.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9326. Examiner Butler's immediate supervisor is Jack Lavinder at (703) 308-3421.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.


DOUGLAS C. BUTLER
PRIMARY EXAMINER
7/25/03
AU 3683

Butler/vs
July 23, 2003